

§ 1.2103

NOTE TO §1.2102: To determine the rules that apply to competitive bidding, specific service rules should also be consulted.

[59 FR 44293, Aug. 26, 1994, as amended at 60 FR 40718, Aug. 9, 1995; 62 FR 23163, Apr. 29, 1997; 63 FR 10780, Mar. 5, 1998]

§ 1.2103 Competitive bidding design options.

(a) The Commission will choose from one or more of the following types of auction designs for services or classes of services subject to competitive bidding:

(1) Simultaneous multiple-round auctions (using remote or on-site electronic bidding);

(2) Sequential multiple round auctions (using either oral ascending or remote and/or on-site electronic bidding);

(3) Sequential or simultaneous single-round auctions (using either sealed paper or remote and/or on-site electronic bidding); and

(4) Combinatorial (package) bidding auctions.

(b) The Commission may use combinatorial bidding, which would allow bidders to submit all or nothing bids on combinations of licenses or authorizations, in addition to bids on individual licenses or authorizations. The Commission may require that to be declared the high bid, a combinatorial bid must exceed the sum of the individual bids by a specified amount. Combinatorial bidding may be used with any type of auction. The Commission may also allow bidders to submit contingent bids on individual and/or combinations of licenses.

(c) The Commission may use single combined auctions, which combine bidding for two or more substitutable licenses and award licenses to the highest bidders until the available licenses are exhausted. This technique may be used in conjunction with any type of auction.

(d) The Commission may use real time bidding in all electronic auction designs.

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§ 1.2104 Competitive bidding mechanisms.

(a) *Sequencing.* The Commission will establish the sequence in which multiple licenses will be auctioned.

(b) *Grouping.* In the event the Commission uses either a simultaneous multiple round competitive bidding design or combinatorial bidding, the Commission will determine which licenses will be auctioned simultaneously or in combination.

(c) *Reservation Price.* The Commission may establish a reservation price, either disclosed or undisclosed, below which a license subject to auction will not be awarded.

(d) *Minimum Bid Increments, Minimum Opening Bids and Maximum Bid Increments.* The Commission may, by announcement before or during an auction, require minimum bid increments in dollar or percentage terms. The Commission also may establish minimum opening bids and maximum bid increments on a service-specific basis.

(e) *Stopping Rules.* The Commission may establish stopping rules before or during multiple round auctions in order to terminate the auctions within a reasonable time.

(f) *Activity Rules.* The Commission may establish activity rules which require a minimum amount of bidding activity.

(g) *Withdrawal, Default and Disqualification Payment.* As specified below, when the Commission conducts an auction pursuant to §1.2103, the Commission will impose payments on bidders who withdraw high bids during the course of an auction, or who default on payments due after an auction closes or who are disqualified.

(1) *Bid withdrawal prior to close of auction.* A bidder that withdraws a high bid during the course of an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or subsequent auction(s). In the event that a bidding credit applies to any of the bids, the bid withdrawal payment is either the difference between the net withdrawn bid and the subsequent net winning bid, or the difference between the gross withdrawn bid and the subsequent gross winning bid, whichever is

less. No withdrawal payment will be assessed for a withdrawn bid if either the subsequent winning bid or any of the intervening subsequent withdrawn bids equals or exceeds that withdrawn bid. The withdrawal payment amount is deducted from any upfront payments or down payments that the withdrawing bidder has deposited with the Commission. In the case of multiple bid withdrawals on a single license, the payment for each bid withdrawal will be calculated based on the sequence of bid withdrawals and the amounts withdrawn in the same or subsequent auction(s). In the event that a license for which there have been withdrawn bids is not won in the same auction, those bidders for which a final withdrawal payment cannot be calculated will be assessed an interim bid withdrawal payment equal to 3 percent of the amount of their bid withdrawals. The 3 percent interim payment will be applied toward any final bid withdrawal payment that will be assessed at the close of the subsequent auction of the license.

Example 1 to paragraph (g)(1): Bidder A withdraws a bid of \$100. Subsequently, Bidder B places a bid of \$90 and withdraws. In that same auction, Bidder C wins the license at a bid of \$95. Withdrawal payments are assessed as follows: Bidder A owes \$5 (\$100–\$95). Bidder B owes nothing.

Example 2 to paragraph (g)(1): Bidder A withdraws a bid of \$100. Subsequently, Bidder B places a bid of \$95 and withdraws. In that same auction, Bidder C wins the license at a bid of \$90. Withdrawal payments are assessed as follows: Bidder A owes \$5 (\$100–\$95). Bidder B owes \$5 (\$95–\$90).

Example 3 to paragraph (g)(1): Bidder A withdraws a bid of \$100. Subsequently, in that same auction, Bidder B places a bid of \$90 and withdraws. In a subsequent auction, Bidder C places a bid of \$95 and withdraws. Bidder D wins the license in that auction at a bid of \$80. Withdrawal payments are assessed as follows: At the end of the first auction, Bidder A and Bidder B are each assessed an interim withdrawal payment equal to 3 percent of their withdrawn bids pending Commission assessment of a final withdrawal payment (Bidder A would owe 3% of \$100, or \$3, and Bidder B would owe 3% of \$90, or \$2.70). At the end of the second auction, Bidder A would owe \$5 (\$100–\$95) less the \$3 interim withdrawal payment for a total of \$2. Because Bidder C placed a subsequent bid that was higher than Bidder B's \$90 bid, Bidder B would owe nothing. Bidder C would owe \$15 (\$95–\$80).

(2) *Default or disqualification after close of auction.* A bidder assumes a binding obligation to pay its full bid amount upon acceptance of the high bid at the close of an auction. If a high bidder defaults or is disqualified after the close of such an auction, the defaulting bidder will be subject to the payment in paragraph (g)(1) of this section plus an additional payment equal to 3 percent of the subsequent winning bid. If the subsequent winning bid exceeds the defaulting bidder's bid amount, the 3 percent payment will be calculated based on the defaulting bidder's bid amount. If either bid amount is subject to a bidding credit, the 3 percent credit will be calculated using the same bid amounts and basis (net or gross bids) as in the calculation of the payment in paragraph (g)(1) of this section. Thus, for example, if gross bids are used to calculate the payment in paragraph (g)(1) of this section, the 3 percent will be applied to the gross amount of the subsequent winning bid, or the gross amount of the defaulting bid, whichever is less.

(3) *Default or disqualification in combinatorial bidding auctions after close of auction.* A bidder assumes a binding obligation to pay its full bid amount upon acceptance of the high bid at the close of an auction. When the Commission conducts a combinatorial bidding auction pursuant to § 1.2103 (a)(4), if a high bidder defaults or is disqualified after close of a combinatorial bidding auction, the defaulting bidder will be subject to a default payment. The default payment consists of a deficiency portion and an additional payment. The deficiency portion of the default payment shall be calculated as set forth in § 1.2104(g)(3)(i). The additional payment shall be calculated as set forth in § 1.2104(g)(3)(ii).

(i) *Deficiency payment.* The deficiency portion of the default payment shall be calculated as set forth. In the case that any of the relevant bids are subject to bidding credits, the default payment will be adjusted in an analogous manner to that used in § 1.2104(g)(1).

(A) Where a defaulting bidder won licenses individually (*i.e.*, not as part of a package), and in a subsequent auction the licenses are also won individually, the deficiency portion will be

calculated on a license-by-license basis (*i.e.*, the differences between the amounts originally bid and the amounts subsequently bid will not be aggregated to determine a net amount owed). If the subsequent winning bid(s) exceed the defaulted bid(s), no deficiency portion will be assessed. Even in the absence of a deficiency portion, however, an additional 25% payment will be due.

(B) Where a defaulting bidder won licenses in a package(s), and in a subsequent auction the licenses are won either in the same package(s), or in smaller packages or as individual licenses that correlate to the defaulted package(s), the deficiency portion will be determined on a package-by-package basis, and the differences between the amount originally bid and the amount(s) subsequently bid will not be aggregated to determine a net amount owed. Thus, in this situation, the deficiency portion will be calculated in an analogous manner to that used in § 1.2104(g)(2). However, with regard to each individual package, where the licenses are subsequently sold individually or as part of smaller packages, the amounts received in the subsequent auction will be aggregated in order to determine any deficiency.

(C) Where a defaulting bidder or bidders won licenses either individually or as part of packages, and in a subsequent auction the licenses are won as larger packages or different packages (not including the situation described in paragraph (b) of this section), the deficiency portion will be calculated by subtracting the aggregate amount originally bid for the licenses from the aggregate amount bid in the subsequent auction for the licenses.

(D) When in the situation described in paragraph (c) of this section, there are multiple defaulting bidders, the default payment (both the deficiency portion and the additional amount portion) will be allocated to the defaulting bidders in proportion to the amount they originally bid.

Example: Bidder 1 defaults on Package ABC for \$200, and Bidder 2 defaults on Package DE for \$400, and in a subsequent auction the licenses are won in Package AB for \$150 and Package CDE for \$350, Bidder 1 would be liable for $\frac{1}{3}$ of the default payment and Bidder

2 would be responsible for $\frac{2}{3}$. The total default payment would be equal to the difference between the total of the original bids (\$600) and the total of the subsequent amounts bid (\$500) plus an additional amount of 25 percent of the total of the subsequent amounts bid. The total default payment therefore would equal \$100 (\$600-\$500) plus 25 percent of \$500 (\$125), for a total default payment of \$225.

(ii) *Additional payment.* If a high bidder defaults or is disqualified after the close of such an auction, the defaulting bidder will be subject to the payment in paragraph (g)(3)(i) of this section plus an additional payment equal to 25 percent of the subsequent winning bid(s) or the defaulting bid(s), whichever is less. In the case that either the subsequent winning bid(s) or the defaulting bid(s) is subject to bidding credits, the additional payment will be calculated in an analogous manner to that used in § 1.2104(g)(2). In calculating the additional payment to determine whether the defaulted bid(s) or the subsequent winning bid(s) is the lesser amount, the defaulted and subsequent bid(s) will be compared according to the rules set forth in paragraphs (g)(3)(i)(A) through (g)(3)(i)(D) of this section for calculation of the deficiency portion of the default payment.

(h) The Commission will generally release information concerning the identities of bidders before each auction but may choose, on an auction-by-auction basis, to withhold the identity of the bidders associated with bidder identification numbers.

(i) The Commission may delay, suspend, or cancel an auction in the event of a natural disaster, technical obstacle, evidence of security breach, unlawful bidding activity, administrative necessity, or for any other reason that affects the fair and efficient conduct of the competitive bidding. The Commission also has the authority, at its sole discretion, to resume the competitive bidding starting from the beginning of the current or some previous round or cancel the competitive bidding in its entirety.

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